

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

PATRICIA HERNANDEZ

VS.

SAM'S EAST, INC.

§
§
§
§
§

CIVIL ACTION NO.: 21-CV-956

JURY DEMANDED

INDEX OF DOCUMENTS FILED
WITH REMOVAL ACTION

- A. Plaintiff's Original Petition.
- B. Return of Service and Citation.
- C. Defendants' Original Answer to Plaintiff's Original Petition.
- D. Defendants' Demand for Jury Trial.
- E. Case Summary.
- F. List of Counsel of Record.

Exhibit A

FILED
8/30/2021 4:31 PM
Mary Angie Garcia
Bexar County District Clerk
Accepted By: Roxanne Mujica

CIT PPS W/JD

CAUSE NO. **2021CI17972**

PATRICIA HERNANDEZ	§	IN THE DISTRICT COURT
	§	
VS.	§	Bexar County - 438th District Court JUDICIAL DISTRICT
	§	
SAM'S EAST, INC. D/B/A	§	
SAM'S WHOLESALE CLUB	§	BEXAR COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE COURT:

PATRICIA HERNANDEZ, Plaintiff, files this, her Original Petition, complaining of SAM'S EAST, INC., d/b/a SAM'S WHOLESALE CLUB, Defendant, and for cause of action, respectfully shows unto the Court the following:

**I.
DISCOVERY CONTROL PLAN**

Plaintiff intends that discovery be conducted under Level 3 in accordance with the Texas Rules of Civil Procedure.

**II.
PARTIES**

Plaintiff is an individual and resident of San Antonio, Bexar County, Texas. The last four digits of Plaintiff's Social Security Number are 0639.

Defendant is a foreign corporation with its principal office located in Bentonville, Arkansas and may be served with process by serving its Registered Agent C T Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201-3136, which is its registered address. In this connection, Plaintiff requests that the Clerk of the Court issue citation to Defendant for service by private process server.

**III.
VENUE FACTS**

Plaintiff is maintaining this cause of action in Bexar County, Texas as all or a substantial part of the events or omissions giving rise to the claim occurred in Bexar County.

**IV.
NATURE OF CASE**

Plaintiff brings this action seeking damages for personal injuries sustained as a result of a trip and fall incident occurring on or about January 10, 2021, in San Antonio, Bexar County, Texas.

Plaintiff is seeking monetary damages in excess of \$250,000 but not over \$1,000,000.

**V.
FACTS OF CASE**

1. On or about January 10, 2021, Plaintiff was a business invitee upon the premises owned or occupied by Defendant at 5565 De Zavala Road, San Antonio, Texas.
2. At all times material hereto, Defendant exercised control, or had the right to exercise control over the subject premises as the owner or occupier.
3. Plaintiff entered Defendant's premises and as she walked through the door, she stepped onto a dark colored mat/rug which had been placed on the floor by Defendant's employees or agents. As she stepped on the mat/rug her foot tripped on a defect in the mat/rug and fell to the floor.
4. The mat/rug in question posed an unreasonable risk of harm to Plaintiff and other patrons because of the defect. The defect consisted of a wrinkle on the mat/rug rising above the level of the rest of the mat/rug which was difficult for her to see due to the darkness of the mat/rug prior to stepping on it.
5. The defect in the mat/rug was further made unreasonably dangerous by Defendant's failure to provide any warning of the defect.

6. Defendant knew, or in the exercise of ordinary care, should have known of the existence of the unreasonably dangerous condition described above prior to Plaintiff's entrance into its premises.

**VI.
DEFENDANT'S NEGLIGENCE**

1. As Plaintiff was an invitee on its premises, Defendant had the duty to exercise reasonable care to reduce or eliminate the risk of harm to Plaintiff created by the unreasonably dangerous condition described above. However, Defendant failed to so exercise such care. Such failure constituted negligence on the part of Defendant.
2. Defendant's failure to exercise reasonable care to reduce or eliminate the risk described above, proximately caused Plaintiff to fall and suffer the injuries described below.
3. In addition to Defendant's failure to exercise reasonable care to reduce or eliminate such risk of harm to Plaintiff, Defendant failed to warn Plaintiff of the unreasonably dangerous condition existing at the entrance of its premises. Such failure constituted negligence on the part of Defendant.

**VII.
PLAINTIFF'S INJURIES AND DAMAGES**

1. As a result of Defendant's negligence described above, Plaintiff tripped and fell and suffered injuries to her hip and knee which required medical attention.
2. As a consequence of the incident in question, Plaintiff has incurred reasonable and necessary medical expenses for her treatment and in all reasonable probability, she will continue to so incur reasonable and necessary medical expenses in the future.

3. As a further consequence of the incident in question, plaintiff has suffered severe physical pain and mental anguish and in all reasonable probability she will continue to so suffer physical pain and mental anguish in the future.
4. As a further consequence of the incident in question, plaintiff has suffered severe physical impairment and in all reasonable probability she will continue to so suffer physical impairment in the future.
5. As consequence of the incident in question and Defendant's failure to exercise reasonable care, Plaintiff has suffered damages in excess of the minimal jurisdictional limits of this Court, for which she now sues.

**VIII.
PRE-JUDGMENT AND POST-JUDGMENT INTEREST**

In addition to the damages described above, Plaintiff is entitled to recover from Defendant, pre-judgment and post-judgment interest at the rates prescribed by law.

**IX.
DEMAND FOR JURY**

Plaintiff hereby demands trial by jury and will be paying the required jury fee at the time of the filing of this Petition.

**X.
PRAYER**

Plaintiff requests that Defendant be cited to appear herein and that upon final trial hereof, she have and recover judgment against Defendant for such amounts as the trier of fact awards, together with pre-judgment and post-judgment interest as provided by law, along with such other and further relief to which she may be justly entitled.

Respectfully submitted,

HUMBERTO G. GARCIA, PLLC
6243 IH-10 West, Suite 955
San Antonio, Texas 78201
Tel. (210) 225-0909
Fax: (210) 960-4604

By: /s/ Humberto G. Garcia
Humberto G. Garcia
Texas State Bar No. 07636620
hgarcia@salinastriallaw.com

LAW OFFICES OF GEORGE SALINAS
6243 IH 10 West, Suite 955
San Antonio, Texas 78201
Tel: (210) 225-0909
Fax: (210) 960-4604

By: /s/ George L. Salinas, Jr.
George L. Salinas, Jr.
Texas State Bar No. 24044929
George@salinastriallaw.com

ATTORNEYS FOR PLAINTIFF

Exhibit B

FILED
9/10/2021 2:08 PM
Mary Angie Garcia
Bexar County District Clerk
Accepted By: Maria Jackson
Bexar County - 438th District Court

RETURN OF SERVICE

State of Texas

County of BEXAR

438th District Court

Case Number: 2021CI17972

Plaintiff:
PATRICIA HERNANDE



vs.

Defendant:
SAM'S EAST, INC. D/B/A SAM'S WHOLESALE CLUB

Received by Tony Hitt on the 9th day of September, 2021 at 3:41 pm to be served on **SAM'S EAST INC DBA SAMS WHOLESALE CLUB BY SERVING ITS REGISTERED AGENT CT CORPORATION SYSTEM, 1999 BRYAN ST, STE 900, DALLAS, TX 75201.**

I, Tony Hitt, do hereby affirm that on the **10th day of September, 2021 at 12:50 pm, I:**

served a **REGISTERED AGENT** by delivering a true copy of the **CITATION / PLAINTIFF'S ORIGINAL PETITION** with the date and hour of service endorsed thereon by me, to: **George Martinez, Intake Specialist for CT Corporation System as Registered Agent** at the address of: **1999 Bryan Street, Suite 900, Dallas, TX 75201** on behalf of **SAM'S EAST INC DBA SAMS WHOLESALE CLUB**, and informed said person of the contents therein, in compliance with state statutes.

"My name is Tony Hitt my date of birth is 3/16/1960 and my address is 4313 Woodbluff Dr Mesquite, TX 75150. I declare under penalty of perjury that the foregoing is true and correct. Executed in Dallas County, State of Texas on September 10, 2021 by Tony Hitt declarant."

A handwritten signature in black ink, appearing to read "Tony Hitt", written over a horizontal line.

Tony Hitt
PSC-11703 Exp. 11/30/22

Pronto Process
1406 W Salinas
San Antonio, TX 78207
(210) 226-7192

Our Job Serial Number: BBW-2021009461

PRIVATE PROCESS

Case Number: 2021CI17972

Patricia Hernandez VS Sam's East Inc
(Note: Attached Document May Contain Additional
Litigants)

IN THE 438TH DISTRICT COURT
BEXAR COUNTY, TEXAS

CITATION

"THE STATE OF TEXAS"

Directed To: **SAM'S EAST INC DBA SAMS WHOLESALE CLUB**
BY SERVING ITS REGISTERED AGENT CT CORPORATION SYSTEM

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00am on the Monday next following the expiration of twenty days after you were served this CITATION and PETITION a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org" Said **ORIGINAL PETITION** was filed on this the 30th day of August, 2021.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT on this the 9th day of September, 2021.

HUMBERTO G GARCIA
ATTORNEY FOR PLAINTIFF
6243 IH 10 WEST 955
SAN ANTONIO TX 78201-2086



Mary Angie Garcia
Bexar County District Clerk
101 W. Nueva, Suite 217

San Antonio, Texas 78205
By: /s/ Alexandra Johnson
Alexandra Johnson, Deputy

PATRICIA HERNANDEZ VS SAM'S EAST INC

Case Number: 2021CI17972
438th District Court

Officer's Return

I received this CITATION on the _____ day of _____, 20____ at _____ o'clock ____M. and () executed it by delivering a copy of the CITATION with attached ORIGINAL PETITION the date of delivery endorsed on it to the defendant _____ in person on the _____ day of _____, 20____ at _____ o'clock ____M. at _____ or () not executed because _____.

Fees: _____ Badge/PPS #: _____ Date certification expires: _____ County, Texas

BY: _____

OR: VERIFICATION OF RETURN (If not served by a peace officer) SWORN TO THIS _____

NOTARY PUBLIC, STATE OF TEXAS

OR: My name is _____, my date of birth is _____, and my address is _____ County.

I declare under penalty of perjury that the foregoing is true and correct. Executed in _____ County, State of Texas, on the _____ day of _____, A.D., _____.

Declarant

Exhibit C

FILED
10/1/2021 2:36 PM
Mary Angie Garcia
Bexar County District Clerk
Accepted By: Laura Castillo
Bexar County - 438th District Court

NO.: 2021CI17972

PATRICIA HERNANDEZ	§	IN THE DISTRICT COURT OF
	§	
VS.	§	BEXAR COUNTY, TEXAS
	§	
SAM'S EAST, INC. D/B/A SAM'S	§	438TH JUDICIAL DISTRICT
WHOLESALE CLUB	§	

DEFENDANT'S ORIGINAL ANSWER TO PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, SAM'S EAST, INC., Defendant in the above numbered and entitled cause of action, and files this Original Answer to Plaintiff's Original Petition and for support thereof would respectfully show unto the Court as follows:

I.

Defendant asserts denials, under Rule 92 of the Texas Rules of Civil Procedure, to each and every allegation contained in the said Petition, and demands strict proof thereof.

II.

Pleading further and without waiving the foregoing, Defendant asserts that if Plaintiff suffered injuries as a result of the incident made the basis of this lawsuit, which Defendant expressly denies by the filing of this pleading, that said injuries were caused in whole or in part by Plaintiff's own negligence or responsibility. Accordingly, Defendant asserts all rights, privileges and remedies afforded or available pursuant to Chapter 33 of the Texas Civil Practices and Remedies Code.

III.

Pleading further and without waiving the foregoing, Defendant asserts that Plaintiff's recovery of medical or health care expenses, if any, is limited to the amount actually paid or incurred by or on behalf of Plaintiff. Accordingly, Defendant asserts all rights, privileges and

remedies afforded or available to it pursuant to §41.0105 of the Texas Civil Practices and Remedies Code.

IV.

Pleading further and without waiving the foregoing, Defendant asserts that the incident in question was proximately caused or solely proximately caused by the negligent and/or wrongful conduct of persons or third parties outside the control of this Defendant. Accordingly, Defendant asserts all rights, privileges and remedies afforded or available to it pursuant to Chapter 33 of the Texas Civil Practices and Remedies Code.

V.

Pleading further and without waiving the foregoing, Defendant specifically reserves the right to amend this Answer, as is its right under the Texas Rules of Civil Procedure.

PREMISES CONSIDERED, SAM'S EAST, INC. prays that Plaintiff take nothing by this lawsuit, and that Defendant be allowed to go hence without day and recover all of their costs and attorneys' fees, and such other and further relief, both special and general, at law or in equity, to which they may show themselves justly entitled.

Respectfully submitted,

DAW & RAY, LLP

/s/ James K. Floyd
James K. Floyd; TBN:24047628
Email: jfloyd@dawray.com
14100 San Pedro Ave., Suite 302
San Antonio, TX 78232
(210) 244-3121 Telephone
(201) 224-3188 Facsimile
**ATTORNEY FOR DEFENDANT,
SAM'S EAST, INC.**

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the above and foregoing instrument has been served upon all known counsel of record by electronic service on this the 1st day of October, 2021.

Humberto G. Garcia
HUMBERTO G. GARCIA, PLLC
6243 IH-10 West, Suite 955
San Antonio, Texas 78201

Email: hgarcia@salinastriallaw.com

George L. Salinas, Jr.
LAW OFFICES OF GEORGE SALINAS
6243 IH 10 West, Suite 955
San Antonio, Texas 78201

Email: george@salinastriallaw.com

/s/ James K. Floyd
James K. Floyd

Exhibit D

FILED
10/1/2021 2:36 PM
Mary Angie Garcia
Bexar County District Clerk
Accepted By: Laura Castillo
Bexar County - 438th District Court

NO.: 2021CI17972

PATRICIA HERNANDEZ	§	IN THE DISTRICT COURT OF
	§	
VS.	§	BEXAR COUNTY, TEXAS
	§	
SAM'S EAST, INC. D/B/A SAM'S	§	438TH JUDICIAL DISTRICT
WHOLESALE CLUB	§	

DEFENDANT'S DEMAND FOR JURY TRIAL

COMES NOW, Defendant SAM'S EAST, INC. and hereby demands a jury trial as is their right under Tex. Const. Art. I, § 15. Such demand for jury trial is hereby made more than 30 days before the date this case is set for trial in accordance with Tex. R. Civ. P. 216. Defendant tenders the jury fee contemporaneously with the filing of this jury demand which they may show themselves justly entitled.

Respectfully submitted,

DAW & RAY, LLP

/s/ James K. Floyd
James K. Floyd; TBN:24047628
Email: jfloyd@dawray.com
14100 San Pedro Ave., Suite 302
San Antonio, TX 78232
(210) 244-3121 Telephone
(201) 224-3188 Facsimile
**ATTORNEY FOR DEFENDANT,
SAM'S EAST, INC.**

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the above and foregoing instrument has been served upon all known counsel of record by electronic service on this the 1st day of October, 2021.

Humberto G. Garcia
HUMBERTO G. GARCIA, PLLC
6243 IH-10 West, Suite 955
San Antonio, Texas 78201

Email: hgarcia@salinastriallaw.com

George L. Salinas, Jr.
LAW OFFICES OF GEORGE SALINAS
6243 IH 10 West, Suite 955
San Antonio, Texas 78201

Email: george@salinastriallaw.com

/s/ James K. Floyd
James K. Floyd

Exhibit E

438th District Court

Case Summary

Case No. 2021CI17972

Patricia Hernandez VS Sam's East Inc

§ Location

§ **438th District Court**

§ Judicial Officer

§ **438th, District Court**

§ Filed on

§ **08/30/2021**

Case Information

Case Type: PREMISES

Case Status: **08/30/2021 Pending**

Assignment Information

Current Case Assignment

Case Number 2021CI17972

Court 438th District Court

Date Assigned 08/30/2021

Judicial Officer 438th, District Court

Party Information

Lead Attorneys

Plaintiff Hernandez, Patricia **GARCIA, HUMBERTO G**
Retained

Defendant Sam's East Inc **FLOYD, JAMES**
Retained

Events and Orders of the Court

08/30/2021	New Cases Filed (OCA)
08/30/2021	PETITION
08/30/2021	REQUEST FOR SERVICE AND PROCESS
08/30/2021	JURY FEE PAID
09/09/2021	Citation Sam's East Inc Served: 09/10/2021
09/10/2021	RETURN OF SERVICE - SUCCESSFUL <i>SAM'S EAST, INC DBA SAM'S WHOLESALE CLUB</i>
10/01/2021	ORIGINAL ANSWER OF <i>SAM'S EAST INC</i>
10/01/2021	JURY DEMAND JURY FEE PAID

Exhibit F

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

PATRICIA HERNANDEZ

VS.

SAM'S EAST, INC.

§
§
§
§
§

CIVIL ACTION NO.: 21-CV-956

JURY DEMANDED

LIST OF COUNSEL OF RECORD

1. Humberto G. Garcia; SBN: 07636620
Email: hgarcia@salinastriallaw.com
HUMBERTO G. GARCIA, PLLC
6243 IH-10 West, Suite 955
San Antonio, Texas 78201
(210) 225-0909/490-7402 Telephone
(210) 960-4604 Facsimile

George L. Salinas, Jr. SBN: 24044929
Email: george@salinastriallaw.com
LAW OFFICES OF GEORGE SALINAS
6243 IH-10 West, Suite 955
San Antonio, Texas 78201
(210) 225-0909/490-7402 Telephone
(210) 960-4604 Facsimile
**ATTORNEYS FOR PLAINTIFF,
PATRICIA HERNANDEZ**

2. James K. Floyd; SBN: 24047628
Email: jfloyd@dawray.com
DAW & RAY, LLP
14100 San Pedro, Suite 302
San Antonio, Texas 78232
(210) 224-3121 Telephone
(210) 224-3188 Facsimile
**ATTORNEY FOR DEFENDANT,
SAM'S EAST, INC.**